

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THURMAN MEARIN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 14-1717
	)	Judge Nora Barry Fischer/
LOUIS FOLINO, Superintendent, et al.,	)	Magistrate Judge Maureen P. Kelly
	)	
Defendants.	)	

**ORDER OF COURT**

AND NOW, this 21st day of December, 2015, upon consideration of Plaintiff's Objections, (Docket No. [35]), to Chief United States Magistrate Judge Maureen P. Kelly's Memorandum Order of July 7, 2015, (Docket No. [29]), denying his Motion for Sanctions filed initially on June 2, 2015, (Docket No. [23]), Plaintiff's Declarations and attachments, (Docket No. [36]), Defendants' Response in Opposition to Plaintiff's Objections to Order Denying Motion for Sanctions, (Docket No. [44]), and Plaintiff's Reply, (Docket No. [47]),

IT IS HEREBY ORDERED that Plaintiff's Objections [35] are OVERRULED, Plaintiff having failed to demonstrate that Chief Magistrate Judge Kelly's Memorandum Order of July 7, 2015 denying his motion for sanctions is "clearly erroneous or contrary to law," *see* LCvR 72.C.2, Fed. R. Civ. P. 72(a), or that Chief Magistrate Judge Kelly abused the considerable discretion afforded to her in managing discovery and non-dispositive pretrial matters of this type. *See e.g., A.G. Cullen Constr. Inc. v. Travelers and Sur. Co. of America*, 2010 WL 1992559, at \*2 (W.D. Pa. May 17, 2010) (magistrate judges have broad discretion in handling discovery matters); *Bracey v. Harlow*, 2013 WL 2253576, at \*1-3 (W.D. Pa. May 22, 2013) (abuse of discretion standard applies to review of magistrate judge's denial of motion for discovery sanctions). Further, Plaintiff seeks to overturn Chief Magistrate Judge Kelly's decision by

presenting additional evidence and argument to this Court that was not presented to Chief Magistrate Judge Kelly in the initial motion for sanctions and briefing thereon, (i.e., evidence and arguments beyond the discrepancies between the misconduct report and Defendants' Response to Second Request for Documents signed by attorney Mazzocca). (Docket Nos. 35, 36, 47). However, such additional evidence and argument may not be considered by this Court because this Court's review is limited to evidence and argument which was before Chief Magistrate Judge Kelly in the first instance and the newly raised arguments that were not presented to Chief Magistrate Judge Kelly are deemed waived. *See Cullen*, 2010 WL 1992559 at \*2.

IT IS FURTHER ORDERED that Chief Magistrate Judge Kelly's Memorandum Order of July 7, 2015, (Docket No. [29]), is AFFIRMED.

IT IS SO ORDERED.

*s/Nora Barry Fischer*  
Nora Barry Fischer  
United States District Judge

cc/ecf: All counsel of record

cc: Thurman Mearin  
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